



THE RECOVERY ACT:

Understanding, Detecting & Reporting Antitrust Violations

Patricia L. Jannaco, Attorney
U.S. Department of Justice
Antitrust Division
New York Field Office

Why am I here?

Antitrust Division initiative
to help protect recovery funds
from fraud, waste and abuse



Excerpt of Recovery Act



Risk Management

Agencies must immediately review the risk framework provided in Chapter 3 of this Guidance, capture and report against the common government-wide accountability measures, identify any additional agency-specific risks not provided for in Chapter 3, prioritize risk areas, and initiate risk mitigation strategies.

At a minimum, immediate risk mitigation actions must address:

- Audits and investigation of Recovery Act funds to identify and prevent wasteful spending and minimize waste, fraud, and abuse;
- Qualified personnel overseeing Recovery Act funds;
- Competitive awards maximized;
- Timely award of dollars;
- Timely expenditure of dollars;
- Cost overruns minimized; and
- Improper payments minimized.

To assess how well the Federal government and funding recipients are progressing in meeting the items above, agencies should begin preparing to track progress against the above accountability measures.



What is Antitrust?

Protection of Competition



The Sherman Act (15 U.S.C. 1)

- “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”
- Prohibits agreements among competitors in restraint of trade or commerce.



Sherman Act Elements

- **Agreement among competitors**
- **Unreasonable restraint of trade**
 - Price Fixing
 - Bid Rigging
 - Customer / Market Allocation
- **Interstate commerce**
- **Statute of Limitations**
 - 5 years from the *last act* in furtherance of the conspiracy



Price Fixing

Agreement among competitors to :

- Raise, fix or otherwise maintain prices**
- Eliminate discounts or have uniform discounts**
- Establish minimum or floor prices**
- Establish a standard pricing formula**



Bid Rigging

- **Agreement in advance (among some or all of the bidders) to manipulate the outcome of bidding process**
- **Types of bid rigging :**
 - **Bid Suppression**
 - **Complementary Bidding**
 - **Bid Rotation**
 - **Subcontracts to losing bidders**



Allocation

Agreement among competitors to assign :

- Customers**
- Territories**
- Sales volumes**
- Production volumes**
- Market shares**

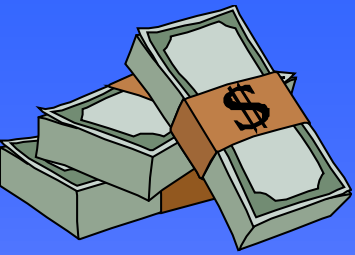


What do you think the penalties are
for Sherman Act violations?





It's risky, of course---if we're caught, it could mean many hours of community service.



Penalties are Significant

- **Individual**
 - Up to \$1 million fine; and/or
 - Maximum of 10 years incarceration
- **Corporation**
 - Up to \$100 million fine
- **Some instances**
 - Fines can go beyond Sherman Act maximums (double the gain or double the loss to the victim)



Companion Violations

- Bribery/Gratuities (18 U.S.C. 201)
- False & Fictitious Claims (18 U.S.C. 287)
- Conspiracy to Defraud U.S. (18 U.S.C. 371)
- False Statements (18 U.S.C. 1001)
- Mail/Wire Fraud (18 U.S.C. 1341, 1343)
- Obstruction of Justice (18 U.S.C. 1519)



Recent Prosecutions

- Recent prosecutions have included cases involving:
 - Contracts for clean-up of Superfund sites in New Jersey
 - Government contracting for various products and services in connection with the wars in Iraq and Afghanistan
 - Contracts related to rebuilding of the levees after Hurricane Katrina

www.usdoj.gov/atr/public/press_releases/2009/index09.htm

Detecting Antitrust Violations

- **Amnesty Program – Self Reporting**
- **Agent Referrals**
- **Anonymous Complaints**
 - Citizen Complaint Center
- **You!**



Four-Part M.A.P.S. Analysis

Market

Application

Patterns

Suspicious Behavior



Market

Who is in the market for this award?

- There are few vendors in the market that offer the goods or services.
- A small group of major vendors controls a large share of the market.



Market

- The goods or services sought are standardized, such that price rather than other competitive factors (design, quality, service) is determinative.
- There are opportunities (trade association meetings) for the competitors to communicate with one another.



Application

Are there similarities between vendor applications or proposals?

- Applications contain similar handwriting/typeface; typos, mathematical errors;
- Applications sent from the same mailing address, e-mail address, fax number, or courier account number;
- Applications that reflect last minute changes (white-outs and cross-outs) were made to alter price quotes.





YOUNG LAE CORPORATION

General Contractor & Equipment

P.O. Box 24024 GMF, Guam 96931

Tel: (671) 649-0649 Fax: (671) 649-1649

December 31, 1997

MR. SONNY SHELTON, Director
Department of Parks and Recreation
Tiyan, Guam.

Subject: Repair of one Paseo Stadium Light Tower

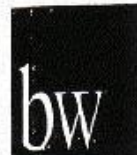
Dear Mr. Shelton,

Please find our estimate for the Restoration of one lighting tower at the Paseo Stadium damage by Typhoon Paka. The total amount of our estimate is **"One Hundred Forty Five Thousand Eight Hundred Fifty Dollars and 00/100 (\$ 145,850.00)"**. Including the supply and installation of Lighting fixtures and power hook up.

We sincerely hope that this is according to your requirements. Please give us a call us if you have any question. Thank you very much.

Sincerely,

Park Young Kwang
President



BW Corporation

December 31, 1997

MR. SONNY SHELTON, Director
Department of Parks and Recreation
Tiyan, Guam.

Subject: Repair of one Paseo Stadium Light Tower

Dear Mr. Shelton,

We submit here with our estimate for Repair and Restoration of one Lighting Tower at the Paseo Stadium that was damage by Typhoon Paka. The total amount of our estimate is **"One Hundred Forty Eight Thousand Three Hundred Fifty Dollars and 00/100 (\$ 148,350.00)"**. Including Labor, Materials and Equipment.

We hope that the above quotation is satisfactory. Please give us a call us if you have any question. Thank you very much.

Sincerely,

Manolito del Rosario
Project Engineer

(4)

SOLICITATION AND OFFER		1. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG 2 AND/OR DMS REG 1		PAGE 1	OF 35
2. SOLICITATION NUMBER DLA13H-85-B-8852		3. SOLICITATION X SEALED BID (IFB) (NEGOTIATED (RFP))		4. DATE ISSUED 14 MAY 1985	
5. REQUISITION/PURCHASE REQ'NG SEE SCHEDULE					
6. ADDRESS MAILED OFFER TO: DEFENSE LOGISTICS AGENCY DEFENSE PERSONNEL SUPPORT CENTER 2800 SOUTH 20TH STREET POST OFFICE BOX 8069 PHILADELPHIA, PA 19101-8069		7. DELIVER HANDCARRIED OFFER, INCLUDING DELIVERY BY COMMERCIAL CARRIER TO: DEFENSE PERSONNEL SUPPORT CENTER OFFER DEPOSITORY BLDG. 9, 2ND FLOOR, WING E 2800 SOUTH 20TH STREET PHILADELPHIA, PA 19145			
6A. FOR INFORMATION CALL (No collect Calls) 215-952-4276		7A. ADDRESS ELECTRONIC TRANSMISSIONS TO: (When Authorized) Facsimile: (215) 952-2228 (For Voice Acknowledgment: (215) 952-2235) TWX: 710 670 1643 TELEX: See DPSC Clause L59A			
6B. PURCHASING AGENT: CONTRACTING OFFICER: OFFICE SYMBOL: DPSC-SPK		MAUREN MATHIS WALTER E. FAULKS			

SOLICITATION

8. Sealed offers will be received at the Defense Personnel Support Center, ATTN: DPSC-SPA, Bldg 9, 2-E, until (hour) 2:00 P.M. local time (date) 19 JUN 1985. To assure prompt delivery mailed offers should be addressed per block 6: electronic transmissions per block 7A: and handcarried offers delivered to the specific location set forth in block 7. If offering, your reply envelope must be plainly marked with the solicitation number, date, and time set forth for receipt of offers.

CAUTION:
FAILURE TO SUBMIT OFFER: See Section L, provision No. 52.214-9, or 52.215-15. When not responding to the solicitation with an offer complete the reverse side, fold, affix postage and mail.

LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS: See Section 1, provision No. 52.214-7 or 52.215-10.
All offers are subject to all terms and conditions contained in this solicitation.

9. THIS PROCUREMENT IS FOR MILK AND ICE CREAM PRODUCTS AND IS:

☐ Unrestricted
☐ Total Small Business set-aside with price differential for Labor Surplus Area Concerns.
☐ Partial Small business set-aside with price differential for Labor Surplus Area Concerns.
☐ Unrestricted with price differential for Labor Surplus Area Concerns.

NOTE: ITEM 10 DOES NOT APPLY IF THE SOLICITATION INCLUDES SE

10. In compliance with the above, the undersigned agrees, if this offer is accepted, to deliver the goods and services at the price set opposite each item, delivered at the designated point(s).

11. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52-232-8)

10 CALENDAR DAYS	%	75
------------------	---	----

12. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offers and related documents numbered and dated.)

AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

13. OFFEROR

NAME AND ADDRESS (Street, City, County, State and Zip Code)

Capitol Ice Cream Wholesalers, Inc.
2307 Bladensburg Road, N.E.
Washington, DC 20018

AREA CODE AND TELEPHONE NUMBER

202-832-7300

Check if remittance address is different from above - Enter such address in schedule (see clause K42).

14. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)

Norman E. Williams, President

15. SIGNATURE

16. OFFER DATE

June 19, 1985

(5)

SOLICITATION AND OFFER		1. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG 2 AND/OR DMS REG 1		PAGE 1	OF 35
2. SOLICITATION NUMBER DLA13H-85-B-8852		3. SOLICITATION X SEALED BID (IFB) (NEGOTIATED (RFP))		4. DATE ISSUED 14 MAY 1985	
5. REQUISITION/PURCHASE REQ'NG SEE SCHEDULE					
6. ADDRESS MAILED OFFER TO: DEFENSE LOGISTICS AGENCY DEFENSE PERSONNEL SUPPORT CENTER 2800 SOUTH 20TH STREET POST OFFICE BOX 8069 PHILADELPHIA, PA 19101-8069		7. DELIVER HANDCARRIED OFFER, INCLUDING DELIVERY BY COMMERCIAL CARRIER TO: DEFENSE PERSONNEL SUPPORT CENTER OFFER DEPOSITORY BLDG. 9, 2ND FLOOR, WING E 2800 SOUTH 20TH STREET PHILADELPHIA, PA 19145			
6A. FOR INFORMATION CALL (No collect Calls) 215-952-4276		7A. ADDRESS ELECTRONIC TRANSMISSIONS TO: (When Authorized) Facsimile: (215) 952-2228 (For Voice Acknowledgment: (215) 952-2235) TWX: 710 670 1643 TELEX: See DPSC Clause L59A			
6B. PURCHASING AGENT: CONTRACTING OFFICER: OFFICE SYMBOL: DPSC-SPK		MAUREN MATHIS WALTER E. FAULKS			

SOLICITATION

8. Sealed offers will be received at the Defense Personnel Support Center, ATTN: DPSC-SPA, Bldg 9, 2-E, until (hour) 2:00 P.M. local time (date) 19 JUN 1985. To assure prompt delivery mailed offers should be addressed per block 6: electronic transmissions per block 7A: and handcarried offers delivered to the specific location set forth in block 7. If offering, your reply envelope must be plainly marked with the solicitation number, date, and time set forth for receipt of offers.

CAUTION:
FAILURE TO SUBMIT OFFER: See Section L, provision No. 52.214-9, or 52.215-15. When not responding to the solicitation with an offer complete the reverse side, fold, affix postage and mail.

LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS: See Section 1, provision No. 52.214-7 or 52.215-10.
All offers are subject to all terms and conditions contained in this solicitation.

THIS PROCUREMENT IS FOR MILK AND ICE CREAM PRODUCTS AND IS:

☐ Unrestricted
☐ Total Small Business set-aside with price differential for Labor Surplus Area Concerns.
☐ Partial Small business set-aside with price differential for Labor Surplus Area Concerns.
☐ Unrestricted with price differential for Labor Surplus Area Concerns.

NOTE: ITEM 10 DOES NOT APPLY IF THE SOLICITATION INCLUDES SE

10. In compliance with the above, the undersigned agrees, if this offer is accepted, to deliver the goods and services at the price set opposite each item, delivered at the designated point(s).

11. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52-232-8)

10 CALENDAR DAYS	%	75
------------------	---	----

12. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offers and related documents numbered and dated.)

AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

13. OFFEROR

NAME AND ADDRESS (Street, City, County, State and Zip Code)

Rosin & Co., Inc. T/A Briggs Ice Cream Co.
5110 Buchanan Street
Hyattsville, MD 20781
Prince George's County

AREA CODE AND TELEPHONE NUMBER

301-277-8788

Check if remittance address is different from above - Enter such address in schedule (see clause K42).

14. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)

Joseph R. Rosin, President

15. SIGNATURE

16. OFFER DATE

6/19/85



LOGISTICS AGENCY
PERSONNEL SUPPORT CENTER
SOUTH 20TH STREET
OFFICE BOX 8059
ALPHIA, PA 18101-8059



Paper v. Electronic

- Same basic fraudulent conduct seen with paper and electronic documents.
- Other M.A.P.S. factors to look for:
 - Metadata (hidden data);
 - Cover e-mail header information is incorrect;
 - Same types of typos as with paper docs.



Metadata Can be Revealing:

SOLICITATION AND OFFER	
2. SOLICITATION NUMBER DLAHH-85-B-8852	3. SOLICITATION X SEAL N
4. ADDRESS MAILED OFFER TO: DEFENSE LOGISTICS AGENCY DEFENSE PERSONNEL SUPPORT CENTER 200 SOUTH 20TH STREET POST OFFICE BOX 889 PHILADELPHIA, PA 19101-8899	
5A. FOR INFORMATION CALL (No collect Calls) 215 962-4276	
5B. PURCHASING AGENT: VALERIE MATHEIS CONTRACTING OFFICER: WALTER E. FRULLS OFFICE SYMBOL: DPSC SPK	
6. Sealed offers will be received at the Defense (hour) 2:00 P.M. local time (to be addressed per block 6): electronic transmission location set forth in block 7. If offering, you and time set forth for receipt of offers. CAUTION: FAILURE TO SUBMIT OFFER: See Section I, with an offer complete the reverse side, fold, or LATE SUBMISSIONS, MODIFICATIONS AND W All offers are subject to all terms and conditions	
9. THIS PROCUREMENT IS FOR <u>MILK AND</u> <input type="checkbox"/> Unrestricted <input type="checkbox"/> Total Small Business set-aside with preferential for Labor Surplus Area Concerns. <input type="checkbox"/> Partial Small business set-aside with preferential for Labor Surplus Area Concerns. <input type="checkbox"/> Unrestricted with price differential for Labor Surplus Area Concerns.	
OFFER NOTE: ITEM 10 DOES NOT APPLY IF THE SOLICITATION	
10. In compliance with the above, the undersigned agrees, from the date at the price set opposite each item, delivered at the date	
11. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 51432-41)	10 CAL
12. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offers and related documents numbered and dated.)	AN
13. OFFEROR CODE	FACILITY CODE
NAME AND ADDRESS (Street, City, County, State and Zip Code) Capitol Ice Cream Wholesalers, Inc. 2307 Bladensburg Road, N.E. Washington, DC 20018	
Check if residence address is different from above - Enter such address on schedule (see clause R42).	
14. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) Norman E. Williams, President	
15. SIGNATURE <i>Norman E. Williams</i>	16. OFFER DATE June 19, 1985

Document1 Properties	
General	Summary
Statistics	Contents
Custom	
Title:	Solicitation and Offer
Subject:	
Author:	JARosin
Manager:	
Company:	Briggs Ice Cream Co.
Category:	
Keywords:	
Comments:	
Hyperlink base:	
Template:	Normal.dot
<input type="checkbox"/> Save preview picture	
OK	Cancel



Patterns

Have patterns developed among competing vendors?

Over a series of awards:

- Competing vendors rotate the award winner;
- Competing vendors win the same/similar amounts of work;
- One vendor always wins, regardless of the competition.



Patterns

- The winning vendor subcontracts work to losing vendors or to vendors who withdrew their proposals or refused to submit proposals.
- As compared with prior awards, a smaller number of vendors submit proposals for the current award.



Patterns

Bid Rotation

- **Bid 1: Company A wins**
- **Bid 2: Company B wins**
- **Bid 3: Company C wins**
- **Bid 4: Company A wins**
- **Bid 5: Company B wins**
- **Bid 6: Company C wins**



Patterns

Bid Suppression

- **Bid 1**: Companies A, B, C, and D bid
- **Bid 2**: Companies B, C, and D bid
- **Bid 3**: Companies A, C, and D bid
- **Bid 4**: Companies A, B, and D bid
- **Bid 5**: Companies A, B, and C bid

Watch for subcontracts to the company that sits out!



Patterns

Who Is Getting What?

- **Bid 1**: A wins a \$3 million contract
- **Bid 2**: B wins a \$5 million contract
- **Bid 3**: C wins a \$1 million contract
- **Bid 4**: C wins a \$4 million contract
- **Bid 5**: A wins a \$2 million contract

Everyone = \$5 million



Suspicious Behavior

Have vendors demonstrated behavior that suggests they worked together?

- **No Chance Bidder** – Bids submitted by a vendor known to lack the ability to perform the contract.
- **Betting Bidder** – Vendor brings multiple bids to a procurement, submits multiple bids, or submits bid once other bidders are determined.
- **Loud Mouth Bidder** – Suspicious statements indicating advance knowledge of a competitor's prices or its likelihood of winning the award.



Discouraging Antitrust Violations

- ✓ Expand the list of bidders/applicants.
- ✓ Require sealed bids/applications to be delivered by a specified time and to a specified location and date and time stamp the packages when they are received.
- ✓ Require a certification of independent price determination to be submitted with all bids/applications.
- ✓ Ask questions.



Detecting Antitrust Violations

- ✓ Use a highlighter to mark typos, errors, etc.
- ✓ Retain bids, envelopes, Federal Express slips, fax transmittal sheets, e-mail messages, etc.
- ✓ Keep a chart of competition over time for products and services you purchase.
- ✓ Keep your eyes and ears open.
- ✓ Ensure your whole team is familiar with M.A.P.S.



Parting Words

Remember M.A.P.S.

Know your resources

Training

Report your concerns





Patricia L. Jannaco, Attorney

U.S. Department of Justice

Antitrust Division

New York Field Office

(212) 264-0660 / patricia.jannaco@usdoj.gov